IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

	Defendant and Counterclaimant.)	REDACTED PUBLIC VERSION
MINERVA SURGICAL	, INC.,)	JURY TRIAL DEMANDED
V.)	C.A. No. 15-1031-JFB-SRF
	Plaintiffs and Counterdefendants,)	
HOLOGIC, INC. and CY PRODUCTS, LLC,	TYC SURGICAL)	

DEFENDANT MINERVA SURGICAL, INC.'S REPLY IN SUPPORT OF ITS MOTION IN LIMINE NO. 1: TO EXCLUDE IMPROPER WILLFULNESS EVIDENCE

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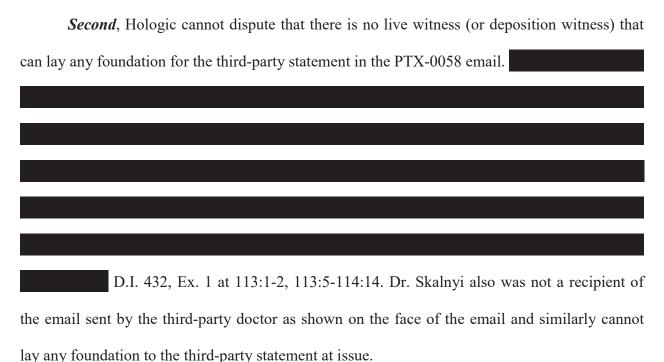
Dated: July 6, 2018

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Minerva's Motion in Limine No. 1 should be granted.

First, Hologic fails to (and cannot) rebut that the PTX-0042 email is irrelevant or highly prejudicial. Contrary to Hologic's argument, the email is not "directly on point" to any of the issues left for jury trial, including willful infringement. Hologic's attempt to split hairs and to distinguish Minerva's cited cases as relating to 510(k) or ANDA is baseless. The reasoning as to why such evidence is inadmissible and irrelevant is the same—the FDA equivalence involves fundamentally different inquiries than patent law.



Third, Minerva is not the party who is trying to introduce the concept of advice of counsel with regards to the accused product. It is Hologic. Indeed, Minerva filed this motion to exclude the PTX-0058 email. Thus, Hologic's argument that Minerva is trying to use advice of counsel as a shield and a sword is nonsense. Further, Mr. Magen's opinion of counsel has nothing to do with the accused product, but only relates to a non-infringing alternative relevant to damages issues.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin J. Schladweiler, hereby certify that on July 6, 2018, I caused the foregoing Defendant Minerva Surgical, Inc.'s Reply in Support of Motion In Limine No. 1: to Exclude Improper Willfulness Evidence to be served via electronic mail upon the following counsel of record:

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